HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.26025 of 2006

Between:

D. Sangaiah Gupta & another

... Petitioner

And

Recovery Officer, Debts Recovery Tribunal, Hyderabad and others

... Respondents

:: ORDER::

Counsel for the Petitioner: Shri C. Raghu

December 15, 2006

Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for

quashing sale proclamation dated 1-11-2006 issued by Recovery Officer, Debts Recovery Tribunal, Hyderabad (respondent No.1) and auction conducted by him on 12th, 13th and 15th December, 2006 in respect of properties specified in the schedule appended to R.P.No.46 of 2006 in O.A.No.62 of 2000.

Although the petitioners have, with a view to keep the Court in dark about the background in which sale proclamation was issued, deliberately refrained from giving the particulars of financial assistance obtained by them from the State Bank of Hyderabad (for short, 'the bank') and proceedings initiated by the latter under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') for recovery of its dues, from the affidavit of petitioner No.1 – D. Sangaiah Gupta, we have been able to cull out the following facts:

i) the petitioners took/availed financial facilities from the bank, but did not pay the amount due;

ii) the bank filed an application under Section 19 of the 1993 Act before Debts Recovery Tribunal, Hyderabad (hereinafter referred to as 'the Tribunal'), which was registered as O.A.No.62 of 2000'

iii) the Tribunal decreed the application of the bank and declared that the petitioners are liable to pay a sum of Rs.2,67,31,560-64 ps.;

iv) pursuant to the recovery certificate issued by the Tribunal, respondent No.1 issued proclamation for sale of the following mortgaged properties:

1) House bearing 1-1-15, Plot No.28, SBH Colony, Kothapet, Hyderabad.
2) Open house site in Sy.No.440/4, Sadashivpet Town, Medak District
3) House bearing No.1-6-26/A/15, Plot No.15, Sardar Vallabh Bai Patel Gunj, Saadahivpet.
4) Land admeasuring Ac.7-00 Gts., in Sy.No.224-E, Ankanapalli Village, Sadashipet, Medak District.
5) Plot admeasuring 375 sq. yards in Ward No.4, Block No.2, Tandur.

v) even after coming to know of the proclamation of sale issued by respondent No.1, the petitioners did not pay the amount due to the bank and, therefore, their properties were auctioned by respondent No.1 on 12th, 13th and 15th of December, 2006.

Shri C. Raghu, learned counsel for the petitioner argued that the proclamation of sale issued by respondent No.1 and the auction held by him are liable to be quashed because the officer concerned did not comply with the mandate of Rules 52 (2) and 54 (3) of the Rules contained in the second schedule appended to the Income Tax Act, 1961 (hereinafter referred to as 'the Rules'), which are applicable to the proceedings initiated under the 1993 Act.

In our opinion, there is no merit in the argument of the learned counsel and the writ petition is liable to be dismissed summarily because the petitioners have not approached the Court with clean hands and also on the ground that they have got effective alternative remedies under Rules 60 and 61 of the Rules. The

petitioners, as mentioned above, deliberately withheld material facts which led to the passing of decree by the Tribunal and issue of recovery certificate. That apart, they have neither pleaded nor any material has been placed before the Court to show that the so-called defect in the proclamation of sale has prejudiced their cause or that the action taken by respondent No.1 for giving effect to the recovery certificate issued by the Tribunal is vitiated due to violation of the rules of natural justice.

We are further of the view that the twin remedies available to the petitioners under Rules 60 and 61 of the Rules are effective alternative remedies and there is no valid ground or justification to entertain the writ petition ignoring the settled law that the High Court will not entertain petition under Article 226 of the Constitution if an effective alternative remedy is available to them.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.33422 of 2006 filed by the petitioners for grant of interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

December 15, 2006

svs